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India: Domestic violence, including the Domestic Violence Act that was implemented in October 2006 (2005 - 2007)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Sources describe domestic violence in India as "common" (US 6 Mar. 2007, Sec. 5), or as a "serious problem" (ibid.; Freedom House 1 Sept. 2006). An article in *The Christian Science Monitor* states that "domestic violence against women is an endemic crime in characteristically patriarchal Indian households" (8 Mar. 2007). *The Indian Express* states that "crimes against women in India have actually grown, not declined, over the years, despite growing awareness and policy interventions" (8 Mar. 2007) and an article from *The Hindu* comes to the same conclusion (12 Apr. 2007).

According to the National Crime Records Bureau (NCRB), a total of 155,553 cases of crimes against women were reported during 2005 with 13.4 percent of such cases being reported in Andhra Pradesh (India n.d.a). For 2004, the NCRB reported a total of 154,333 cases of crimes against women (ibid.). In its annual report for 2005, the NCRB also indicates that cases of incestuous rape had increased by 48.5 percent in 2005 compared to the previous year (ibid.). The National Commission for Women, a governmental statutory body established to improve the status of women, reports that, between January and November 2005, it received a total of 10,433 complaints, with "the highest number of complaints ... in the category of harassment" (ibid. n.d.b). Most of these complaints originated from Uttar Pradesh followed by Delhi (ibid.). The National Family Health Survey for 2005-2006, a survey conducted by 18 research organizations between December 2005 and August 2006, which provides information on the health and population of India and its states, reports that 37.2 percent of women in India have experienced spousal violence (India n.d.d), with the state of Bihar receiving the highest result of 59 percent (ibid. n.d.e), while Himachal Pradesh rated the lowest with 6.2 percent (ibid. n.d.f). According to the Junior Minister for Women and Child Development, "around 70 percent of women are victims of violent acts" (AFP 25 Oct. 2006). Two sources indicate that the number of reported cases is much lower than the number of cases actually occurring (US 6 Mar. 2007, Sec. 5; AFP 26 Oct. 2006). One article states that "the published figures are less than 10 percent of the actual number of crimes that are committed because of women's fears of social stigma and reluctance by police to get involved in family matters (ibid.).

A survey conducted in 2006 by the International Institute for Population Studies reveals that 56 percent of women consider "wife beating ... justified in certain circumstances" (US 6 Mar. 2007, Sec. 5). Similarly, the British Broadcasting Corporation indicates that "[d]omestic abuse is often denied by the victims themselves" (26 Oct. 2006).

A visiting research fellow at the Asian Institute of the University of Toronto, whose area of expertise includes the situation of women in India, who has practised law in New Delhi and who has recently traveled to New Delhi, provided the following information to the Research Directorate in correspondence dated 26 April 2007:

Domestic violence in India is a problem of staggering proportions. It is an endemic problem in a patriarchal gender-biased society. 2/3 of married women are victims of domestic violence. India has one of the highest rates of violence against women who are pregnant. ...

There are few options for women victims of domestic violence -the cultural biases of a traditional society are such that women are not encouraged to speak up about domestic violence. The social structure and mores and pressures do not encourage women either to come forward with complaints or to leave abusive situations. They are not welcomed back to their natal homes. Their economic vulnerability does not give them any choice but to continue to live with their abusers. This economic and social vulnerability make it almost impossible for women to seek help.

The situation with law enforcement officers and the judiciary is less than encouraging. As a practicing lawyer, it has been my experience that police are invariably reluctant to register complaints, and conviction rates are low. Indian women are expected to remain silent about such matters and are encouraged to remain within the matrimonial home and the patriarchal family.

Domestic Violence Act

The Protection of Women from Domestic Violence Act, 2005 ("the Act") was approved by parliament in August 2005 (Freedom House 1 Sept. 2006; AI 23 May 2006; UK 20 Feb. 2006, Para. 3.11.5) and came into effect on 26 October 2006 (*The Ottawa Citizen* 27 Oct. 2006; AFP 26 Oct. 2006; *The Times of India* 27 Oct. 2006). This legislation marks the first time that India has recognized marital rape as a crime (*The Independent* 27 Oct. 2006; US 6 Mar. 2007, Sec. 5; *The Times of India* 21 Nov. 2006). The Act can be accessed at the Ministry of Women and Child Development's Web site at <<http://wcd.nic.in/wdvact.pdf>> (India 13 Sept. 2005b).

The Act contains a definition of domestic violence that includes physical, sexual, verbal, emotional and economic abuse, recognizing dowry harassment as a form of domestic violence (India 13 Sept. 2005a, Sec. 3). The Act allows judges to issue protection orders, residence orders, monetary reliefs, custody orders, compensation orders (ibid., Sec. 18-22; ibid. n.d.c, 38; Lawyers Collective n.d.a) and provides for punishment of up to 20,000 rupees [approximately 538.40 Canadian dollars (Canada 13 Sept. 2005)] and/or one year imprisonment (India 13 Sept. 2005a, Sec. 31; BBC 26 Oct. 2006; AFP 26 Oct. 2006). However, some sources highlight the fact that the Act only allows for protection of women; that is, women can file complaints against their male partners, but no man or woman can file a complaint against another woman (ibid. n.d.c, 38; India Together 14 Dec. 2006).

The Act provides for the appointment of protection officers (individuals) and service providers (non-governmental organizations) who assist the complainant in recording her report, obtaining legal aid, getting relief from the court, finding safe shelter and getting medical attention (India 13 Sept. 2005a, Sec. 8-10; India n.d.c, Para. 2.43; Lawyers Collective n.d.a). However, it is not mandatory for a complainant to go through a protection officer or service provider to make a complaint; a woman can also file her complaint with the police or "directly with the magistrate" (ibid.). *The Hindu* reports that, in Karnataka, the state government had not appointed protection officers as of February 2007 and, therefore, was not enforcing part of the Act (25 Feb. 2007). However, *The Times of India* states that "making a policy for the appointment of staff and creating an infrastructure will take another six months" (27 Oct. 2006).

Several media sources report cases filed under the Act (*The Times of India* 23 Apr. 2007; ibid. 17 Nov. 2006; ibid. 12 Nov. 2006; *The Statesman* 3 Jan. 2007; *Hindustan Times* 17 Dec. 2006; *The Sunday Telegraph* 12 Nov. 2006). No general statistics on the number of cases filed under the Act could be found among the sources consulted by the Research Directorate. *The Times of India* did, however, state that 150 cases were filed in Hyderabad in three months (8 Mar. 2007) and the *South China Morning Post* reports that approximately 250 cases were filed in New Delhi (25 Nov. 2006).

The Visiting Research Fellow from the Asian Institute at the University of Toronto provided the following information to the Research Directorate regarding the Act:

I have just returned from New Delhi, India where it is apparent that the government is carrying out a massive campaign to raise awareness about domestic violence. I cannot provide you with statistics on this matter, but anecdotally, I am aware that several cases have been filed under this new law. It's still too early to estimate the number of cases filed under the law, but the Delhi-based Lawyers Collective, says that they have had several inquiries from women across India. Hundreds of new cases have been registered. Just days after it came into effect, a man in the state of Tamil Nadu was arrested for domestic violence.

This new Act is a huge improvement over existing laws. Before the act came into force, Indian law required that accusers furnish physical evidence of abuse in order for the crimes to be tried. The old laws, women's rights advocates say, encouraged a culture of impunity for spousal abuse. Now, for the first time, verbal, emotional, and economic abuse are punishable under the umbrella of domestic violence.

The act also closes loopholes that previous offenders were able to exploit in laws meant to protect against dowry abuse. Instead of assuming that women are abused only as wives and daughters-in-law, the new law also includes daughters, sisters, mothers, mothers-in-law, sisters-in-law, and even live-in partners under its purview. ...

... [T]he rules [provide] that the complainant would be asked to fill in a formatted complaint in front of the protection officer. Even relatives, friends and NGOs can file complaints on behalf of the women. ...

The women have the option of lodging an FIR [First Instance Report] and not pursuing it after counseling. There are also options like compulsory medical attention, right to stay in the home where she faced abuse, protection, temporary shelter etc.

The Act fills a void in the existing legal framework, seeks to provide effective protection and remedy to women against domestic violence. It seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or adoption. ...

The law seeks to protect the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or

rights in such homes or households. This right is secured by a residence order which is passed by the Magistrate.

I am not sure of the outcome of all the individual cases. There have nevertheless been some successful cases where under the new law, women seeking redress from the court have been awarded the right to remain within the matrimonial home, and also been awarded custody of their children, [and] rent money for a new home. However, despite the success that this law has had, the fact remains that the passing of a new law, and the success of individual cases has not substantially affected the systemic violence against women in India. This new law is certainly critical in the struggle to forward women's rights[;] however, ... implementation has been weak generally, the number of protection officers appointed has been inadequate, police have not been sensitized to the magnitude of the problem, and social attitudes have not been changed. Most important, it has been found that women themselves are not aware of their new rights.

Despite the useful provisions, challenges remain in the law's implementation. Activists have expressed concern that India's police force and the general public are not well-informed enough to tap the law's provisions. In widely publicized past cases, the police have ignored reports of domestic abuse. The police need to be sensitized to these issues. Also, it is a concern of activists that not enough Protection Officers have been appointed, [and the] number of shelters for women ... [is inadequate]. ...

Social legislation is often poorly implemented in India - a country of 1.1 billion people - where court cases can drag for decades because of lack of resources. ...

Ultimately, while the new law on the books is progressive, and a step forward for women's rights in India, the fact remains that the problem of domestic violence is such that progressive laws on the books [must] serve the women whom it is meant for. It is apparent that in India the greater struggle is to change social attitudes. So, in conclusion, I would suggest that although the new law is welcomed by women's rights advocates, and it provides for an actual legal framework to prosecute violence, it is as yet premature to say that it has affected the reality of women's lives which are regulated by tradition, custom and patriarchy. Women's social and economic vulnerability together with entrenched social attitudes mean that women continue to experience violence within the family. The new law does provide a normative framework and a bench mark to hold individuals accountable, however it would be incorrect to say that the situation for women on the ground has changed. Most critical is the fact that the overwhelming majority of domestic violence cases go unreported. Furthermore, in India there are critical issues of access to justice and legal awareness. In such a context, there are realistically speaking few options for women who find themselves in an abusive situation. (26 Apr. 2007)

The Act also contains provisions to allow women to reside in the "shared household," regardless of whether or not they have rights or title to the property (India n.d.c; *ibid.* 13 Sept. 2005a, Sec. 17; *The Independent* 27 Oct. 2006). However, Lawyers Collective, who describes itself as "one of the leading public interest service providers in India with a proven record of setting high standards in human rights advocacy, legal aid and litigation" (n.d.b), notes the judgement issued by the Supreme Court of India in *S.R. Batra & ANR. v. Smt. Taruna Batra*, because this case demonstrates that the definition of a "shared household" can be interpreted in many different ways (n.d.c). The specific provisions relating to the right of a woman to the shared household read as follows:

2.(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. ...

17.(1) ... Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. (India 13 Sept. 2005a, Sec. 2(s) and 17(1))

In the *Batra* judgement of 15 December 2006 (India 8 Feb. 2007, Sec. 12), the Supreme Court ruled that this definition was "clumsily drafted" and found that the female spouse is only entitled to claim a right on a household that her male spouse owned or rented or that belonged to the "joint family" of the male spouse (*ibid.*; *The Indian Express* 29 Dec. 2006). In other words, the Supreme Court found that "there is no right to matrimonial home in India" (Lawyers Collective n.d.c). The Lawyers Collective argues that this judgment is contradictory to section 17 of the Act, that the Court should have made a distinction between living in a household as visitors or as cohabiters and that this judgment may "have the effect of denying the beneficial provisions to hundreds of married women who reside with their husbands and parents-in-law" (*ibid.*). The Lawyers Collective also states that this judgment could lead to a situation where the male spouse connives with the in-laws and intentionally moves out of the household owned or rented by the in-laws so as to prevent the woman from making a residence claim under the Act (*ibid.*).

In its Operational Guidance Note on India, the UK states that, even though this legislation allows women victims of domestic violence to seek protection, the assistance provided may be "inadequate," and that access to this assistance may be inhibited based on the location of the women, their lack of awareness of their rights and their lack of education (20 Feb. 2007, Para. 3.11.6). The United Nations (UN) Committee on the Elimination of Discrimination Against Women, in its Concluding Comments on India, indicates that it is concerned with the fact that "the various states and union territories have not put into place mechanisms to effectively enforce this Act" (2 Feb. 2007, Para. 20). Similarly, Agence France-Presse quotes the founder of Vimochana, a women's rights group, who states that this legislation will be accompanied with "lax enforcement" and that "no mechanisms" were put in place for the application of the legislation (26 Oct. 2006).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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Visiting Research Fellow, Asian Institute of the University of Toronto. 26 April 2007. Correspondence sent to the Research Directorate.

Additional Sources Consulted

Oral sources: The National Commission for Women, Sanchetana Community Health and Research Center, Jagori, Sakshi Violence Intervention Centre, the Ahmedabad Women's Action Group, the Asian Legal Resource Centre and the Centre for Women's Development Studies did not provide information within the time constraints of this Response.

Attempts to contact the Institute for Development and Communication were unsuccessful.

Internet sites, including: Asia Times Online, Asia Women's Human Rights Council, Asian Human Rights Commission, Asian Legal Resource Centre, Centre for Women's Development Studies, Delhi Police, Human Rights Watch (HRW), Jagori, National Resource Centre for Women, Office of the United Nations High Commissioner for Human Rights (OHCHR), PeaceWomen, *The Pioneer* [New Delhi], Sanchetana, Stop Violence Against Women (StopVAW), United Nations Development Programme (UNDP).

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